

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

**MARIA BUSTAMANTE aka
ANA E. CARRERA**

Claimant

VS.

EXCEL CORPORATION

Respondent

Self-Insured

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Docket No. 1,000,575

ORDER

Claimant appealed the November 25, 2003 Award entered by Administrative Law Judge (ALJ) Pamela J. Fuller. The Appeals Board (Board) heard oral argument on May 4, 2004.

APPEARANCES

Stanley R. Ausemus of Emporia, Kansas, appeared for claimant. D. Shane Bangerter of Dodge City, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The Board considered the record and adopts the stipulations listed in the Award.

ISSUES

The ALJ found claimant sustained a ten percent loss of use to her right forearm as a result of her September 6, 2001, work-related accident. Claimant alleges she also injured her shoulder and neck in that accident and is therefore entitled to a permanent partial disability award based upon a general body disability rather than a scheduled injury to the arm. In addition, claimant argues that if her disability is limited to a scheduled injury to the shoulder or arm she is nevertheless entitled to a higher percentage of functional impairment than that found by the ALJ.

Respondent counters that claimant failed to prove that she suffers from any permanent impairment as a result of her work activities. In the alternative, respondent asks that the Board affirm the ALJ's finding of a ten percent functional impairment to the right upper extremity.

The nature and extent of claimant's disability is the only issue raised for the Board's review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The ALJ's Award sets out the relevant facts in detail. It is not necessary to repeat those herein. The Board finds the ALJ's factual findings to be accurate and adopts those findings as its own as if specifically set forth in this order.

Highly summarized, claimant's contention is that the ALJ's Award is inadequate because it failed to include Dr. Pedro A. Murati's rating to her neck and shoulder areas. The involvement of the neck would make this a general body disability.

Claimant's injury occurred on September 6, 2001, which was less than two months after she started working for respondent. She was initially seen by the company nurse. Claimant said that although she had pain and discomfort from her shoulder to her hand she admittedly only reported hand and wrist symptoms to the nurse.

Claimant's native language is Spanish. She was referred by respondent to Dr. J. Raymundo Villanueva on September 13, 2001. Claimant acknowledged that Dr. Villanueva spoke Spanish. Claimant said that she told Dr. Villanueva that she had pain in her hand, arm and shoulder. However, Dr. Villanueva testified that he first became aware of claimant's alleged shoulder symptoms at the March 5, 2002, office visit. This was several months after claimant had last worked for respondent. Due to this delay in onset of claimant's neck and shoulder complaints, coupled with the absence of any finding or diagnosis of neck or shoulder injuries by the treating physicians, Judge Fuller determined that claimant's work-related injury and disability was limited to her right hand and wrist. Judge Fuller adopted the ten percent impairment rating given by the court ordered independent medical expert, Dr. Lynn D. Ketchum.

After claimant reported her injury on September 6, 2001, she was given restrictions by the company nurse and her job was changed until she could be seen by a physician. Following her appointment with the doctor on September 13, 2001, her restrictions were changed and, as a result, her job was again changed to putting labels on boxes. Claimant continued in that light duty job until she left work for surgery on October 25, 2001. When she was released by Dr. Mohammad Awami following her surgery he restricted her against any use of her right upper extremity. Claimant was terminated by respondent on or about November 13, 2001. On November 15, 2001, claimant filed a form K- WC E-1 Application

for Hearing. That form was dated November 6, 2001, and alleged a September 6, 2001 injury to "right hand and right arm and right shoulder."

The ALJ concluded that neither claimant's neck nor shoulder were injured as a result of claimant's work activities. The ALJ made this determination in part because Dr. Murati was the only physician to rate injuries to those areas. Moreover, claimant's first mention of neck and shoulder symptoms came long after her initial report of the hand and wrist symptoms for which she had been given restrictions and eventually underwent surgery. In fact, the first medically documented complaint of neck and shoulder symptoms came well after claimant had last worked for respondent. The Board agrees with the findings and conclusions of the ALJ.

AWARD

WHEREFORE, it is the finding, decision and order of the Appeals Board that the Award entered by Administrative Law Judge Pamela J. Fuller dated November 25, 2003, is affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant
E. Shane Bangerter, Attorney for Respondent
Pamela J. Fuller, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director